

VZCZCXRO2605  
OO RUEHBI RUEHLMC  
DE RUEHLM #0402/01 0711314  
ZNY CCCCC ZZH  
O 121314Z MAR 07  
FM AMEMBASSY COLOMBO  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 5625  
INFO RUEHRL/AMEMBASSY BERLIN PRIORITY 0265  
RUEHK/AMEMBASSY DHAKA PRIORITY 9950  
RUEHIL/AMEMBASSY ISLAMABAD PRIORITY 6919  
RUEHKT/AMEMBASSY KATHMANDU PRIORITY 4994  
RUEHLO/AMEMBASSY LONDON PRIORITY 3592  
RUEHNE/AMEMBASSY NEW DELHI PRIORITY 0732  
RUEHN/AMEMBASSY OSLO PRIORITY 3680  
RUEHKO/AMEMBASSY TOKYO PRIORITY 2760  
RUEHCG/AMCONSUL CHENNAI PRIORITY 7492  
RUEHBI/AMCONSUL MUMBAI PRIORITY 5197  
RUEHGV/USMISSION GENEVA PRIORITY 1875  
RHHMUNA/HQ USPACOM HONOLULU HI PRIORITY  
RHEFDIA/DIA WASHINGTON DC PRIORITY  
RHEHAAA/NATIONAL SECURITY COUNCIL WASHINGTON DC PRIORITY  
RUEHBS/USEU BRUSSELS PRIORITY  
RUEHLMC/MILLENNIUM CHALLENGE CORPORATION PRIORITY

C O N F I D E N T I A L SECTION 01 OF 04 COLOMBO 000402

SIPDIS

SIPDIS

DEPARTMENT FOR SCA/INS  
MCC FOR S GROFF, D NASSIRY, E BURKE AND F REID

E.O. 12958: DECL: 01/12/2017  
TAGS: PGOV PREL PTER PHUM MOPS CE  
SUBJECT: SRI LANKA: EARLY ROADBLOCKS FOR IIGEP

REF: A. COLOMBO 0290

- ¶B. 06 COLOMBO 2122
- ¶C. 06 COLOMBO 1929
- ¶D. 06 COLOMBO 1849 AND PREVIOUS

Classified By: DCM James R. Moore for reasons 1.4(b,d).

¶11. (C) Summary: Minister of Disaster Management and Human Rights Mahinda Samarasinghe called a meeting on March 6 to brief donor country Heads of Mission on the status of the International Independent Group of Eminent Persons (IIGEP). Samarasinghe acknowledged a lack of clarity on the responsibilities of IIGEP assistants and said he wants to "regularize and formalize" their role. The Minister was also concerned that there were many gaps in the schedule when no Eminent Person (EP) would be present in country. Samarasinghe promised careful GSL scrutiny of a letter from IIGEP Chairman Justice Bhagwati regarding possible interference by the Attorney General's Office in the work of the CoI and IIGEP. The GSL's attempt to sharply limit the role of the IIGEP assistants calls into question its commitment to a meaningful role for the IIGEP process. End summary.

¶12. (C) DCM participated in a meeting on March 6 called by Minister of Disaster Management and Human Rights Mahinda Samarasinghe to give the IIGEP donor country Heads of Mission an update on the functioning of the IIGEP. He noted that the IIGEP is a new structure, with no antecedent in Sri Lanka. He added that, although there will be growing pains, he is personally committed to making it work. He said the first formal session of the CoI had been scheduled for March 8, but was postponed to allow more time to translate police reports.

#### Ambiguous Role of IIGEP Assistants

---

¶13. (C) Samarasinghe acknowledged a lack of clarity on the role of the IIGEP assistants. Representatives from the Attorney General's office insisted that the IIGEP assistants

should be limited to serving in a support role to the EPs. The donor countries, however, maintained that the assistants are empowered to represent the EPs when they are out of the country. DCM pointed out that the assistants were recruited as subject specialists in key areas such as witness protection, and their role is not confined to providing administrative support. Samarasinghe said he wants to "regularize and formalize" the role of the assistants and suggested that the EPs write a letter to the CoI stating formally that their assistants are authorized to represent them. He admitted that he "didn't expect the IIGEP assistants to be so busy or so eminent." Deputy Solicitor General Yasantha Kodagoda said that procedural rules for interaction between the assistants and the CoI are necessary. The IIGEP assistants have begun drafting rules of engagement, which will be reviewed by the EPs later this week.

#### EP Schedule of Visits

---

¶4. (C) The Minister also questioned the frequency and duration of the EPs' presence in country. He was concerned that there were too many gaps in the schedule when no EP would be present to observe the CoI, and that there was no plenary meeting of the EPs scheduled in the near future. DCM countered that it was understood by all from the outset that the EPs would be in country approximately once per quarter for approximately two weeks per visit and that there would be few opportunities to bring all the EPs together after the February 2007 launch of the IIGEP.

#### Inappropriate Involvement of the AG's Office

---

COLOMBO 00000402 002 OF 004

¶5. (C) Samarasinghe acknowledged the CoI's receipt of a letter from IIGEP Chairman Justice Bhagwati on the issue of the role of the Attorney General's office in the Commission of Inquiry. He said the GSL takes the issue seriously and will study the letter "sooner rather than later." The letter (full text para 8 below) argues that it is inappropriate for the Attorney General's office to serve as lead counsel for the CoI given that the commission will be investigating actions of the Attorney General's office.

#### Capacity and Funding Assistance Needed

---

¶6. (C) Samarasinghe noted the disparity in financial resources between the IIGEP and CoI and said that the GSL is finding it difficult to fund the CoI to the extent it would like. The EU Head of Mission responded that the IIGEP could provide the CoI with financial assistance if necessary. The Minister also said that the CoI has decided on a witness protection scheme, but wants donor countries to help implement it.

¶7. (C) Comment: The IIGEP mechanism of an international body observing the work of a national commission charged with investigating human rights violations is largely uncharted territory in Sri Lanka, and some growing pains are bound to occur. However, the GSL's desire to sharply limit the role of the IIGEP assistants does not bode well for its stated commitment to transparency. Samarasinghe's comment that he didn't expect the IIGEP assistants to be "so busy or so eminent" indicates GSL resistance to any party other than the EPs, who were never intended to be in Colombo for sustained periods of time, playing a substantial role. Samarasinghe's complaint about the duration and frequency of the EPs' presence is unfounded, both because there is no expectation of a continuous EP presence and because the CoI has yet to even begin its formal proceedings. We will continue to press the GSL on the importance the U.S. and other donor countries attach to transparent investigation of the cases that fall under the CoI's purview and of a

meaningful role for the IIGEP, including their assistants who are on the ground for the duration. End comment.

18. (C) Text of February 27 letter from IIGEP Chairman Bhagwati to CoI Chairman Udalagama:

On behalf of the International Independent Group of Eminent Persons, I wish to acknowledge the high level of cooperation that we have established to date as we embark on the important task entrusted to us by the President and international community. These responsibilities are onerous and expectations are high. It is, therefore, incumbent upon us to ensure observance of the principles of independence, impartiality and competence are enshrined in all aspects of our work.

The Presidential Invitation to Serve as a Member of an International Independent Group of Eminent Persons requires me to bring to your attention relevant matters and issues with a view to ensuring that investigations and inquiries are conducted in a transparent manner and in accordance with basic international norms and standards. In this regard, I wish to raise the issue of the composition of the Panel of Counsel outlined in the Organisational Structure and Rules of Procedures adopted by your Commission. I note that you have invited a Panel of Counsel to be established, comprising officers of the Attorney General's Department. The Panel of Counsel and the Lead Counsel are to be appointed by the Commission based on the nominations of the Attorney General.

The Commission of Inquiry has to examine and comment on the nature, propriety and efficacy of the investigations

COLOMBO 00000402 003 OF 004

conducted into the incidents covered by the Presidential Warrant and make recommendations on measures that should be taken against responsible persons. By necessity, your Commission is required to examine the role of the Attorney General's Department in these investigations and inquiries, using the Panel of Counsel constituted of the very same officers or officers of the same department. This situation involving apparent conflict of interest jeopardizes the actual and perceived independence and impartiality of your Commission.

Additionally, the role of the Attorney General's Department as legal adviser to the government is well known to all. Potential witnesses may be understandably reluctant to provide evidence before your Commission in cases involving allegations against state officials in the presence of the Panel of Counsel comprising staff of the Attorney General's Department. The leading role of staff of the Attorney General's Department in the constitution of the Panel of Counsel will not instill public confidence in the decisions of your Commission but rather undermines the credibility of the Commission as a body independent of all state agencies.

It is my understanding that previous Commissions in Sri Lanka dealing with investigations into serious human rights violations have expressed similar reservations on the role of the Attorney General's Department in independent investigations. I draw your attention to the 2001 Final Report of the Commission of Inquiry into Involuntary Removal and Disappearances of Certain Persons (All Island) Sessional Paper No.1 ) 2001, page 16., where the Commission expressed concern over the establishment of a Missing Persons Unit within the Attorney General's Department, where it stated that:

"The establishment of this Unit while underlining the special problem of prosecuting cases of disappearance, suffers from drawbacks in that the prosecutor is the Attorney General who invariably is the representative of the State, either as prosecutor or respondent, in judicial proceedings. In this instance, the present arrangement makes the Attorney General the representative of the victim, and prosecutions are

conducted on the basis that the crimes were the acts of errant officials. This again highlights a problem of the public perception of a conflict of interest in that the victims are very much affected by the awareness that State Officers are investigating into complaints against Officers of the State..."

To avoid further conflicts of interest and to protect public confidence in the independence of prosecutions, the All Island Commission recommended that an Independent Human Rights Prosecutor be appointed for serious human rights violations involving state officials. This recommendation was echoed by the 2003 Report of the National Human Rights Commission's Committee on Disappearances in the Jaffna Region Report of the National Human Rights Commission's Committee on Disappearance in the Jaffna Region.

In this regard, I note the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions,

"In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular,

COLOMBO 00000402 004 OF 004

they shall be independent of any institution, agency or person that may be the subject of the inquiry..."

I am deeply concerned that the role of the Attorney General's Department in the Commission's Panel of Counsel compromises national and international principles of independence and impartiality that are central to the credibility and public confidence of the Commission of Inquiry.

Therefore, I urge you to reconsider your decision to invite the Attorney General's Department to serve on the Panel of Counsel, and instead invite independent Counsel to serve on the Commission's Panel of Counsel.

BLAKE